

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WILLIAM JAMES BROWN

PLAINTIFF

V.

Case No. 06-5118

DEPUTY McCULLEY, DEPUTY
HAMMOCK, CAPT. HUNTER
PETRAY, and NURSE SUE McDONALD

DEFENDANTS

ORDER

Currently before this court is plaintiff's motion for jury trial and defendants' response in opposition to that motion. (Doc. 13). Defendants contend that plaintiff's motion should be denied as untimely. (Doc. 14).

On June 29, 2006, plaintiff filed his complaint in this action. (Doc. 1). Defendants filed an answer on August 28, 2006. (Doc. 8). On September 26, 2006, plaintiff filed his motion for jury trial.

Rule 38(b) of the Federal Rules of Civil Procedure states that a plaintiff in a civil action may demand a jury trial, but must do so "not later than 10 days after the service of the last pleading directed to such issue." This rule also states that "failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury." FED. R. CIV. PRO. 38(d). Because plaintiff's motion for jury trial was filed more than 10 days after defendants filed their answer, his motion is untimely. Accordingly, plaintiff's motion is hereby DENIED.

IT IS SO ORDERED this the 1st day of November 2006.

/s/ Beverly Stites Jones
HON. BEVERLY STITES JONES
UNITED STATES MAGISTRATE JUDGE